

**REPORT FOR: LICENSING & GENERAL
PURPOSES COMMITTEE**

Date of Meeting: 30 July 2013

Subject: Proposal to introduce an Early Morning Restriction Order in part of Stanmore

Responsible Officer: Caroline Bruce, Corporate Director of Environment and Enterprise

Exempt: No

Enclosures: Appendix 1 - Plan showing the area covered by Proposed EMRO
Appendix 2 - Guidance issued under s182 of the LA 2003 (section 16)
Appendix 3 - Police reform and Social Responsibility Act 2011, s119

Section 1 – Summary and Recommendations

This report sets out the reasons why the introduction of an Early Morning Restriction Order (EMRO) in part of Stanmore should be considered and the process begun.

Recommendations:

That officers of the Licensing Authority be authorised to take the prescribed steps to seek to introduce an EMRO in part of Stanmore as proposed in this report.

Section 2 – Report

Background

- 2.1 The Police Reform and Social Responsibility Act 2011 extended the flexibility of the existing EMRO power in the Licensing Act 2003 to provide licensing authorities with an additional tool to shape and determine local licensing, and to address specific problems caused by late night drinking. The 2011 Act extended these powers to cover a longer period each night and lowered the threshold for introducing them. Licensing authorities now have the power to make EMROs if they consider this appropriate for the promotion of licensing objectives, rather than necessary. EMROs have been introduced alongside various other measures aimed at rebalancing the Licensing Act 2003 in favour of local communities, and to increase the tools and powers available to licensing authorities and the police to tackle alcohol-related problems in local areas.
- 2.2 EMROs are a local power that licensing authorities can choose whether or not to exercise. If a licensing authority introduces an EMRO, it will apply to premises licences, club premises certificates and temporary event notices (TENs) that operate within the specified EMRO period. Licensing authorities will be required to advertise the proposal to make the EMRO and demonstrate that they have evidence to justify doing so, as well as considering representations, before its introduction.
- 2.3 Following its public consultation, *Dealing with the Problems of Late Night Drinking*, the Government has announced that in relation to EMROs there will be no exemptions for types of premises, as there are in relation to the late night levy apart from stipulated under s172e of the PRSR Act. This will ensure that EMROs will be a simple, pre-packaged tool for licensing authorities to use to readjust the focus of their night-time economy away from problem drinking, if such a measure would promote the licensing objectives.
- 2.4 In recognition of New Year Eve's status as a night of national celebration, EMROs do not apply on New Year's Eve into New Year's Day. This is a national exemption and applies to every EMRO made.
- 2.5 An EMRO may be applied to the whole or part of the licensing authority's area, if the licensing authority considers this is appropriate for the promotion of the licensing objectives.
- 2.6 Licensing authorities are required to advertise their proposal to make an EMRO and consider any representations made about it before deciding whether to introduce an EMRO in their areas.
- 2.7 If the licensing authority has identified a problem in a specific area attributable to the supply of alcohol at two or more premises in that area, and has sufficient evidence to demonstrate that it is appropriate

for the promotion of the licensing objectives, it can propose making an EMRO. The licensing authority should first decide on the matters which must be the subject of the proposal. These are:

- the days (and periods on those days) on which the EMRO would apply;
- the area to which the EMRO would apply;
- the period for which the EMRO would apply (if it is a finite period); and
- the date from which the proposed EMRO would apply.

2.8 The proposed EMRO must be advertised. The licensing authority should include a short summary of the evidence and the manner in which representations can be made in the document, as well as the details of the proposed EMRO. The proposal must be advertised for at least 42 days. The licensing authority must publish the proposal on its website and in a local newspaper. If no newspaper exists, it must be published in a local newsletter, circular or similar document. The licensing authority must also send a notice of the proposal to all affected people in its area. They are:

- holders of (and applicants for) premises licences or club premises certificates to which the proposed EMRO would apply;
- premises users in relation to TENs to which the proposed EMRO would apply;
- those who have received a provisional statement in respect of a premises to which the proposed EMRO would apply.

2.9 Licensing authorities must, moreover, display a notice of the proposal in the area to which the EMRO would apply, in a manner which is likely to bring the proposal to the attention of those who may have an interest in it.

2.10 The licensing authority should also inform responsible authorities in its area and neighbouring licensing authorities of its proposal to make an EMRO. It may also like to consider what further steps could be taken, in any particular case, to publicise the proposal in order to draw it to the wider attention of any other persons who are likely to have an interest in it.

2.11 Those who are affected by a proposed EMRO, responsible authorities or any other person have 42 days (starting on the day after the day on which the proposed EMRO is advertised) to make relevant representations. To be considered a relevant representation, a representation must:

- be about the likely effect of the making of the EMRO on the promotion of the licensing objectives;
- be made in writing in the prescribed form and manner, setting out the EMRO to which it relates and the nature of the representation;

- be received within the deadline; and
 - if made by a person other than a responsible authority, not be frivolous or vexatious.
- 2.12 Responsible authorities may wish to make representations, as may affected persons
- 2.13 Others may also wish to make representations about the proposed EMRO. These persons could include, but are not limited to:
- residents;
 - employees of affected businesses;
 - owners and employees of businesses outside the proposed EMRO area; and
 - users of the late night economy.

3. Current situation

- 3.1 It is quite usual for premises to serve Temporary Event Notices (TENs) from time to time in order to extend their permitted activities to cover some of the seasonal holiday and celebratory periods.
- 3.2 Further to changes to the Licensing Act 2003, the number of TENs that premises can serve on the Licensing Authority have increased as well as the duration of TENs, allowing premises to open for longer hours and for longer periods.
- 3.3 During the last Christmas period a collection of premises within the Stanmore area (please refer to the attached map) were open until 5:30 am during Saturday and Sunday evenings and till 4:30 am on Friday evenings (on most weekends from November 2012 until early January 2013).
- 3.4 This Authority and the Out of Hours Noise Team received many complaints from that area regarding public nuisance until the early hours of the morning relating to customer noise, fights and drunken behaviour.
- 3.5 Due to this considerable increase in complaints, additional patrols up to 5am were organised by the Licensing Team to visit and monitor closing times and dispersal policies of each venue. Whilst this reduced some of the complaints, the neighbouring residents continued to suffer from anti social behaviour from patrons until the early hours of the morning.

4. Why a change is needed

- 4.1 It is likely that the Authority will be served with similar TENs this year leading up to the Christmas period.

- 4.2 As the complaints are related to more than one premises and the causal effect is of a cumulative nature, the Police or Environmental Health are unable to make a valid representation against these TENs.

5. Main options

- 5.1 It is recommended that an Early Morning Restriction Order (EMRO) is placed in the geographical area marked on the attached map to cover Licensed Premises so that it would cover any TENs served by these premises and restrict the hours of sale or supply of alcohol to the hours stipulated by the EMRO.
- 5.2 It is proposed that the EMRO would start at 02.00 and finish at 06.00 everyday starting on 1 November 2013 and finishing on 5 January 2014.

6. Other options considered

- 6.1 Cumulative Impact Zones (CIPs)
- 6.2 Whilst these zones would take account of problems caused due to the density of the licensed premises in the area, CIPs do not control TENs. Hence this option would not be suitable for what the Authority is seeking to achieve.
- 6.3 See paragraph 4.2 also.

Legal comments

The Licensing Act 2003 (sections 172A - 172E) and the Licensing Act 2003 (Early Morning Alcohol Restriction Orders) Regulations 2012 set out details about EMROs and the process to create them. The Guidance to the Licensing Act 2003 also provides details (in section 16 – see enclosed) of the process to be followed.

Financial Implications

- There are no financial implications to the Council.

Risk Management Implications

Risk included on Directorate risk register? No

Separate risk register in place? No

It is likely that affected Businesses will resist the Authority making this order and representations against the introduction of the proposed EMRO are

likely from local and national organisations. There is a statutory process that would need to be followed to deal with these.

Equalities implications

Was an Equality Impact Assessment carried out? An initial assessment has been carried out which indicated a LOW impact and a full EQIA will be conducted and results analysed as part of the process, taking into account any representations made.

Corporate Priorities

Please identify which corporate priority the report incorporates and how:

- Keeping neighbourhoods clean, green and safe.
The Order will reduce Anti Social behaviour experienced by the Residents in this locality
- United and involved communities: A Council that listens and leads.
Further to complaints from Residents during the last festive period this Department has tried to address these issues with the operators with little success, hence the decision to consult on this order to minimise the impact on residents

Section 3 - Statutory Officer Clearance

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|--------------------|-------------------------------------|---|
| Name:Kanta Halai | <input checked="" type="checkbox"/> | on behalf of the Chief Financial Officer |
| Date: 18 July 2013 | | |
| Name: Paresh Metha | <input checked="" type="checkbox"/> | on behalf of the Monitoring Officer |
| Date: 18 July 2013 | | |

Section 4 - Contact Details and Background Papers

Contact: Shankar P Sivashankar, Service Manager 8736 6237

Background Papers:

Licensing Act 2003

Police Reform and Social Responsibility Act 2011, EMROs

Statutory Guidance issued under s182 of the Licensing Act 2003, June 2013

If appropriate, does the report include the following considerations?

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| 1. | Consultation | YES |
| 2. | Corporate Priorities | YES |